APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 81-2130 & 81-2184/85/86/87/88/89

UNITED STATES OF AMERICA

vs.

STEELE, Hoyt P.,

Appellant in No. 81-2130

(D.C. Criminal No. 80-00320-02)

UNITED STATES OF AMERICA

vs.

GENERAL ELECTRIC COMPANY,

Appellant in No. 81-2184

(D.C. Criminal No. 80-00320-01)

UNITED STATES OF AMERICA

vs.

NAPLES, ROBERT,

Appellant in No. 81-2185

(D.C. Criminal No. 80-00320-03)

UNITED STATES OF AMERICA

vs.

TWOMBLY, INC.,

Appellant in No. 81-2186

(D.C. Criminal No. 80-00320-04)

UNITED STATES OF AMERICA

vs.

SCHENECTADY TURBINE SERVICES, LTD.,

Appellant in No. 81-2187

(D.C. Criminal No. 80-00320-05)

UNITED STATES OF AMERICA

vs.

MOTHON, CHARLES,

Appellant in No. 81-2188

(D.C. Criminal No. 80-00320-06)

UNITED STATES OF AMERICA

vs.

TWOMBLY, INC.,

Appellant in No. 81-2189

(D.C. Criminal No. 80-00073)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Present: ALDISERT, WEIS and BECKER, *Circuit Judges*.

JUDGMENT

This cause came to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel April 26, 1982.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered July 10, 1981 in D.N.J. Crim. No. 80-73 (C.A. No. 81-2189) be, and the same is hereby affirmed. It is further ordered and adjudged that the judgments entered June 24, 1981, in D.N.J. Crim. No. 80-320 (C.A. Nos. 81-2130 and 81-2184), and entered June 26, 1981, in D.N.J. Crim. No. 80-320 (C.A. Nos. 81-2186, 81-2187 and 81-2188), be and same are hereby reversed on the basis that directed verdicts of acquittal should have been granted with respect to Counts 2, 3 and 5 of the said indictment, reversed with respect to Counts 1, 4, and 7 of the said indictment, and the cause remanded for a new trial on these counts. It is further ordered and adjudged that the judgment entered June 26, 1981, in D.N.J. Crim. No. 80-320 (C.A. No. 81-2185) be, and the same is hereby reversed as to all counts. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Sally Mrvos

SALLY MRVOS
Clerk

June 16, 1982

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2189

UNITED STATES OF AMERICA

vs.

TWOMBLY, INC.,

Appellant

(D.N.J. Crim. No. 80-00073)

Present: ALDISERT, WEIS and BECKER, *Circuit Judges.*

ORDER

The petition for panel rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the petition for rehearing before the original panel is denied.

BY THE COURT,

/s/ Aldisert

ALDISERT
Circuit Judge

Dated: July 15, 1982

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

vs.

TWOMBLY, INC.

APPLICATION FOR THE COURT TO REQUEST INTERNATIONAL JUDICIAL ASSISTANCE

CRIMINAL NO. 80-73

The United States of America by its undersigned attorneys applies to this Court, pursuant to Rule 57(b), Federal Rules of Criminal Procedure and Rule 28(b), Federal Rules of Civil Procedure, for a request by this Court for the assistance of the Supreme Court of Bermuda to take whatever action is necessary to obtain the attendance of the following individuals to appear before Mr. Donald M. Welch, Consul of the United States, acting as the Commissioner in this matter, or whomever else the Supreme Court of Bermuda deems appropriate, and give testimony and deliver certain documentary evidence more specifically identified below. It is suggested that the taking of this commission evidence be done at the United States Consulate General, on June 11, 1980 and such other times as the Commissioner deems necessary. It is requested that the witnesses set forth below be examined and cross-examined by counsel for the United States and Twombly, Inc.

Witnesses and evidence sought for trial.

1. Mr. Michael Collins
"Eerie Castle"
Southhampton, Bermuda

and such records of or relating to transactions between Turbo-Electric Equipment Ltd., of Hamilton, Bermuda and Twombly, Inc., Vernon Twombly, the Puerto Rican Water Resources Authority, General Electric Co., and Carlos Velasquez-Toro as he may have in his power to deliver.

2. Mr. William M. Cox
Cox & Wilkinson
Parliament Street
Hamilton, Bermuda

and such records of or relating to transactions between Turbo-Electric Equipment Ltd., of Hamilton, Bermuda and Twombly, Inc., Vernon Twombly, the Puerto Rican Water Resources Authority, General Electric Co., and Carlos Velasquez-Toro as he may have in his power to deliver.

3. Mr. N. David Anfossi, C.A.
Atlas House
Reid Street
Hamilton, Bermuda

and such records of or relating to transactions between Turbo-Electric Equipment Ltd., of Hamilton, Bermuda and Twombly, Inc., Vernon Twombly, the Puerto Rican Water Resources Authority, General Electric Co., and Carlos Velasquez-Toro as he may have in his power to deliver.

4. Mr. Trevor Allwood
Manager, Banking Division
Bermuda National Bank
Hamilton, Bermuda

and all records of account number 821-12 in the name of Turbo-Electric Equipment Ltd., for the years 1974-1975, and 1976, with particular reference to correspondence and transactions between Turbo-Electric Equipment Ltd., and Twombly, Inc., Vernon Twombly, the Puerto Rican Water Resources Authority, General Electric Company and Carlos Velasquez-Toro, and all records of any accounts held by Twombly, Inc., Vernon Twombly, and Carlos Velasquez-Toro.

5. Michael Barany
Custodian of Records
Hamilton Princess Hotel
Hamilton, Bermuda

and such records reflecting the stay at the Hamilton Princess by Charles Mothon, Vernon Twombly or Carlos Velasquez-Toro during 1974, 1975 and 1976.

6. Willard Lightbourne
Custodian of Records
Office of Immigration
Government of Bermuda
Hamilton, Bermuda

and all immigration arrival and departure cards of Charles Mothon, Vernon Twombly and Carlos Velasquez-Toro for the years 1974, 1975 and 1976.

FACTS

In June 1973, the Puerto Rico Water Resources Authority (PRWRA), a Commonwealth Government Agency, invited bids on a proposed power generation facility planned for Aguirre, Puerto Rico. General Electric Company (GE) submitted a bid on the project. G.E. was informed in September 1973, shortly after the bids were submitted by Charles Mothon, a former G.E. em-

ployee and reputed owner of Turbo-Electric Equipment Ltd., that G.E. could win the contract "if [it] did what [it] knew [it] had to do." At about the same time Vernon Twombly, president Twombly, Inc., told G.E. Puerto Rico field sales representative that he could assist G.E. in obtaining the contract if Twombly, Inc., were used as the construction subcontractor.

G.E. agreed to use Twombly as a subcontractor on the Aguirre project and to authorize the creation of a bribe fund amounting to $300,000. Twombly, however, rejected that figure as "insulting" and persuaded the G.E. executives to create a $1 million bribe fund. The G.E. executives instructed their subordinates to arrange the necessary mechanics for creating the bribe fund.

The two employees who were assigned this task have testified that they worked out an arrangement whereby Twombly was obligated to supply materials for which G.E. would pay 4.2 million dollars including 1 million dollars in profit, with the understanding that the 1 million dollars would be used as a bribe fund. The two employees understood that the bribe was intended for Carlos Velasquez-Toro, the PRWRA Chief of Operations, and a member of the PRWRA contract award committee.

Records of Twombly, Inc., indicate that Twombly, Inc., arranged to purchase the material which was added to its subcontract, from Turbo-Electric Equipment Ltd. (TEE), a Bermuda firm controlled by Charles Mothon. Apparently TEE was used because it had the necessary banking connections in Bermuda to effect on offshore funds transfer to Velasquez-Toro.

According to PRWRA records, five suppliers, including General Electric, filed bids on the PRWRA project in September 1973. The raw (i.e., unadjusted) bids ranged from $67 million (Westinghouse) to $102 million (Hi-

tachi), with G.E.'s $87 million bid about halfway between. In October 1973, a PRWRA Award Committee composed of Valasquez Toro and four other persons prepared a technical evaluation which resulted in the adjustment, for sake of comparison, of the competing bids. The subjective bid evaluation/adjustment process resulted in General Electric's bid being the lowest, although it differed for the next two bids by only one percent. The Award Committee report contained no discussion of the relative merits of the other bids which were nearly as low as G.E.'s. G.E. was awarded the contract.

As the plant construction got underway, Twombly made periodic payments to TEE by ordering the New Jersey Bank (in Patterson, New Jersey) to transfer funds to the Bermuda National Bank for credit to TEE account number 821-12. These wire transfers were affected through the respective correspondent banks in New York. Between March 1974 and June 1976, there were eleven such wire transfers and three checks, totalling $4.4 million. One of these transfers is the subject of the attached indictment.

In the Summer of 1975, Twombly encountered severe cash flow problems because of an extended labor strike and site flooding. He sought relief from General Electric, which assigned its site auditor, Carl Mutch, to conduct a detailed audit of Twombly's books to ascertain the depth of his alleged financial problems. The audit verified Twombly's need for financial assistance. In the course of the audit, however, Mutch became suspicious when he saw that a Bermuda company was the purported supplier of $4. million in fabricated metal products. Mutch confronted Twombly, who revealed to him the circumstances of the scope transfer. Mutch will testify that Twombly stated to him that the payments to TEE were

not only in payment for materials, but also to facilitate the creation of a bribe fund.

Our present evidence is insufficient to establish whether or not a bribe was actually paid to Velasquez Toro. Since Bermuda law does not permit us to obtain banking or other records, the tracing of the funds ends with funds going to the TEE account at the Bermuda National Bank.

Public documents on file at the Registrar of Companies of Turbo-Electric Equipment Limited show Mr. William M. Cox to be a Director of the company. Documents of Twombly, Inc., obtained by the United States reveal that Michael Collins was the manager of Turbo-Electric Equipment Limited. Both individuals have advised Joseph Covington of the Department of Justice that they were involved in at least some phase of the operation of Turbo-Electric Equipment Limited. Mr. Anfossi is on record at the Registrar of Companies as having been the liquidator of Turbo-Electric Equipment Limited.

THE OFFENSES

Under the Penal Code of Puerto Rico (Title 33 Sections 272 and 4360) it is unlawful for persons to bribe government officials. This conduct is punishable under United States federal law, Title 18 United States Code, Section 1952, if the bribe money is sent from one State to another.

Copies of the relevant statutes of Puerto Rico and of the United States are attached.

The evidence from the individuals named above is necessary to establish that the contract between Twombly, Inc., and TEE was for the purpose of promoting bribery in violation of Puerto Rican law, and that Mr. Toro received bribe money as a result. In addi-

tion, the evidence sought can aid in establishing the receipt of the 4.4 million dollars in Bermuda from Twombly, Inc., in New Jersey.

Respectfully submitted,

ROBERT J. DEL TUFO
United States Attorney

/s/ Joseph P. Covington
JOSEPH P. COVINGTON
Special Attorney
Department of Justice
Washington, D.C.

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

vs.

TWOMBLY, INC.

REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE

Criminal No. 80-73

TO THE SUPREME COURT OF BERMUDA:

The United States District Court for the District of New Jersey presents its compliments to the Supreme Court of Bermuda and requests international judicial assistance to obtain evidence to be used in a criminal trial on July 14, 1980 before this Court in the above-captioned matter.

The assistance requested is that the Supreme Court of Bermuda compel the appearance of the below listed individuals before a commissioner acting on behalf of the court in this matter and give evidence touching on matters more fully set forth in the attached application, and to bring with them documentary evidence as set forth below. It is requested that Mr. Donald M. Welch, Consul of the United States, act as commissioner in this matter, or such other person as the Supreme Court of Bermuda deems appropriate. It is further requested that the commission evidence be given at the American Consulate General, Hamilton, Bermuda on June 11, 1980 or such other times as the Commissioner deems necessary, and that a verbatim transcript of the proceeding be made.

Witnesses and evidence sought for trial.

1. Mr. Michael Collins
"Eerie Castle"
Southhampton, Bermuda

and such records of or relating to transactions between Turbo-Electric Equipment Ltd., of Hamilton, Bermuda and Twombly, Inc., Vernon Twombly, the Puerto Rican Water Resources Authority, General Electric Co., and Carlos Velasquez-Toro as he may have in his power to deliver.

2. Mr. William M. Cox
Cox & Wilkinson
Parliament Street
Hamilton, Bermuda

and such records of or relating to transactions between Turbo Electric Equipment Ltd., of Hamilton, Bermuda and Twombly, Inc., Vernon Twombly, the Puerto Rican Water Resources Authority, General Electric Co., and Carlos Velasquez-Toro as he may have in his power to deliver.

3. Mr. N. David Anfossi, C.A.
Atlas House
Reid Street
Hamilton, Bermuda

and such records of or relating to transactions between Turbo-Electric Equipment Ltd., of Hamilton, Bermuda and Twombly, Inc., Vernon Twombly, the Puerto Rican Water Resources Authority, General Electric Co., and Carlos Velasquez-Toro as he may have in his power to deliver.

4. Mr. Trevor Allwood
Manager, Banking Division
Bermuda National Bank
Hamilton, Bermuda

and all records of account number 821-12 in the name of Turbo-Electric Equipment Ltd., for the years

1974-1975, and 1976, with particular reference to correspondence and transactions between Turbo-Electric Electric Ltd., and Twombly, Inc., Vernon Twombly, the Puerto Rican Water Resources Authority, General Electric Company and Carlos Velasquez-Toro, and all records of any accounts held by Twombly, Inc., Vernon Twombly, and Carlos Velasquez-Toro.

5. Michael Barany
Custodian of Records
Hamilton Princess Hotel
Hamilton, Bermuda

and such records reflecting the stay at the Hamilton Princess by Charles Mothon, Vernon Twombly or Carlos Velasquez-Toro during 1974, 1975 and 1976.

6. Willard Lightbourne
Custodian of Records
Office of Immigration
Government of Bermuda
Hamilton, Bermuda

and all immigration arrival and departure cards of Charles Mothon, Vernon Twombly and Carlos Velasquez-Toro during 1974, 1975 and 1976.

This Court is authorized by Title 28 United States Code, Section 1782 to extend similar assistance on request of the judicial authorities of Bermuda.

The United States District Court for the District of New Jersey is prepared to reimburse your Court for all costs incurred in executing the instant request and extends to the Supreme Court of Bermuda the assurance of its highest consideration.

_____

UNITED STATES DISTRICT JUDGE

_____

DATE

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

vs.

TWOMBLY, INC.

Criminal No. 80-73

Judge Thompson

MOTION TO CONTINUE TRIAL DATE

The United States of America, by its undersigned attorneys, respectfully moves this Court, pursuant to Rule 12, Federal Rules of Criminal Procedure, to vacate the May 27th trial date in the above-captioned case and continue the case for trial until July 14, 1980. In support of this request, the Government asserts the following:

1. On March 13, 1980, a Newark grand jury returned a single count indictment charging Twombly, Inc., with a violation of the Travel Act, 18 U.S.C. 1952. At the scheduled arraignment before this court on March 24, 1980, Ms. Barbara A. Corprew, appearing on behalf of the Government, advised the Court and defense counsel that the grand jury investigation was not completed since the Government expected to return a superceding indictment charging additional defendants well before any trial date that the Court would conceivably set in the indicted matter. As a result of these representations, the Court set a tentative trial date with the knowledge that the case would not proceed to trial.

2. Despite the Government's efforts to obtain Letters Rogatory assistance from the Bermudian authorities in

advance of the scheduled trial date, it recently became obvious that commission proceedings, pursuant to the Letters Rogatory request, could not feasibly be set until June 11, 12, and 13. Consequently, we now request that the trial be rescheduled for July 14, 1980.

3. Counsel have spoken with defense counsel, Mr. Donald Horowitz, and have confirmed that he had no objection to setting June 11, 1980 as the date for the Letters Rogatory commission proceedings subject to the completion of a trial scheduled for May 12, 1980 before the Honorable Judge Meanor in *United States* v. *Canino*, 80-82. Additionally, Mr. Horowitz advised counsel that he has no objection to continuing the trial date in the above-captioned matter until July 14, 1980.

WHEREFORE, and for such reasons as herein stated, the Government respectfully requests that this motion be granted.

Respectfully submitted,

ROBERT J. DEL TUFO
United States Attorney

/s/ Barbara A. Corprew
BARBARA A. CORPREW
Attorney
Department of Justice
Washington, D.C.

/s/ Joseph P. Covington
JOSEPH P. COVINGTON
Special Attorney
Department of Justice
Washington, D.C.

I hereby certify that a copy of the foregoing Motion has been served upon Mr. Donald Horowitz, Cummins, Dunn, Horowitz & Pashman, 39 Hudson Street, Hackensack, New Jersey 07601 this 29th day of April, 1980.

/s/ Barbara A. Corprew
BARBARA A. CORPREW